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Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1929

No. 350

THE BASSICK MANUFACTURING COMPANY,
PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED AUGUST 29, 1929

CERTIORARI GRANTED NOVEMBER 4, 1929

(34,481)

(34,481)

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Petition for writ of certiorari	1	1
Record from Court of Claims	1	3
Petition	1	3
General traverse	9	9
Argument and submission	9	9
Special findings of fact	11	10
Conclusion of law	13	14
Memorandum	13	14
Judgment	15	14
Clerk's certificate (omitted in printing)	16	
Order allowing certiorari		17

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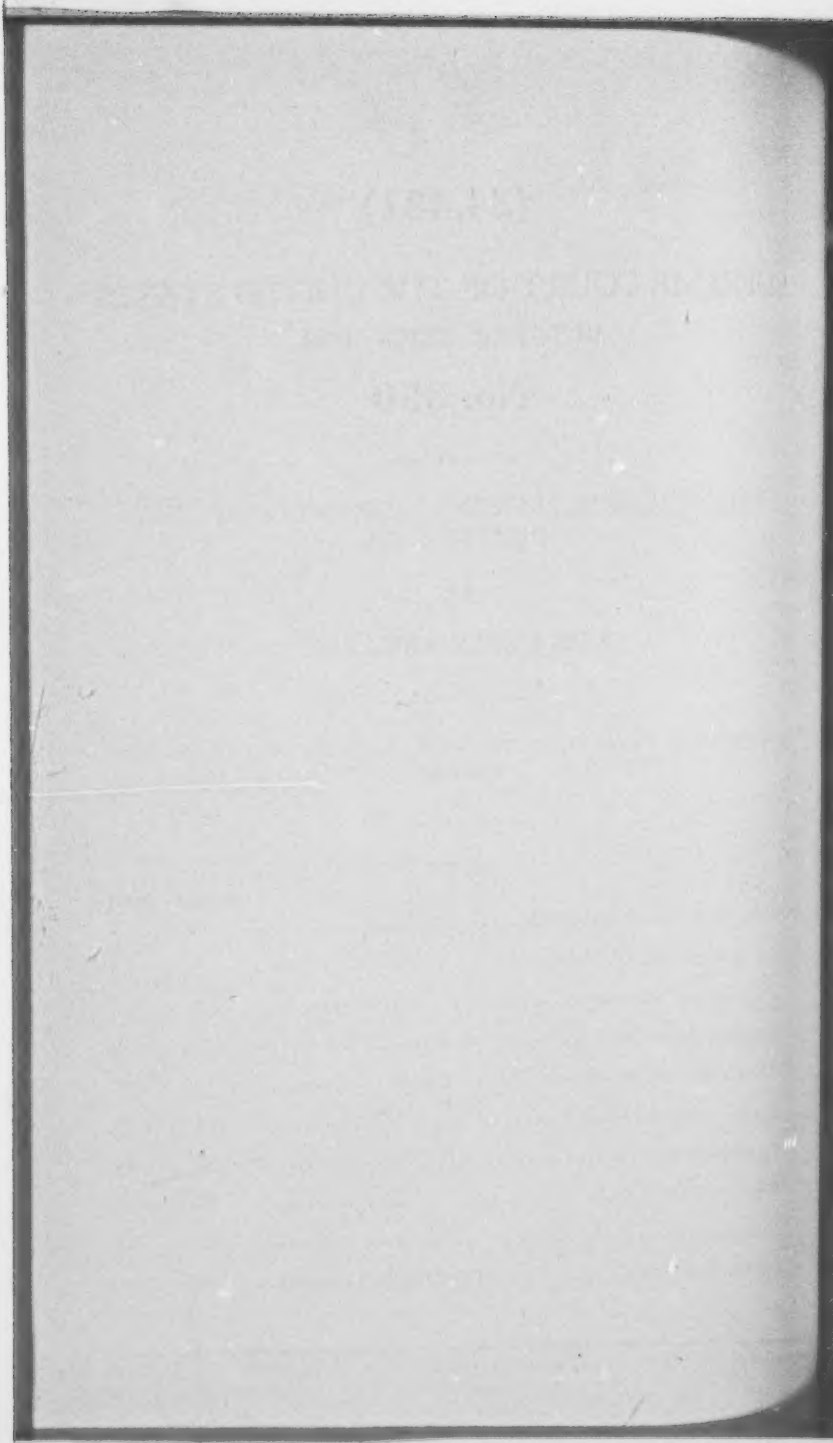

[fol. 1]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 350

THE BASSICK MANUFACTURING COMPANY

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT: Your petitioner, The Bassick Manufacturing Company, by its attorney, respectfully prays for a writ of certiorari to review the judgment of the United States Court of Claims in the above entitled cause.

Statement of the Case

The petitioner manufactures and distributes, among other things, an article or device designated and known commercially as a gascolator. It is a device designed for and used on or in connection with internal combustion engines. It is placed on or attached to the fuel line between the fuel tank and the carburetor of the engine, and its function is to strain the gasoline in order to prevent dirt, water, grit, or any other foreign matter from reaching the carburetor. The gascolator manufactured and sold by petitioner is adaptable for use and in fact is used on or in connection with gasoline engines used for many purposes other than to furnish motive power to automobiles. It is used on engines which operate tractors, motor boats, airplanes, and various kinds of industrial and farming machinery. And a gascolator such as is used on or in connection with an automobile engine is interchangeable and may be used on engines used for any or all of the other purposes above enumerated. While it serves a very useful purpose, it is not in any sense necessary or essential to the operation of any gasoline engine.

On sales of gascolators, as above described, made by pe-
[fol. 2] titioner between September 1, 1922, and February 28, 1926, the Commissioner of Internal Revenue levied and assessed against and collected from petitioner excise taxes in the amount of $15,616.01. Said taxes were levied, assessed, and collected under the provisions of Section 900(3) of the Revenue Act of 1921, 42 Stats. 277, and Section 600(3) of the Revenue Act of 1924, 43 Stat. 253,322, which imposed excise taxes on the sales of "parts" or "accessories" for automobiles. Claim for refund of said taxes was seasonably filed with the Commissioner of Internal Revenue which claim was predicated among other things upon the ground that the gascolators in respect of which they were levied, assessed, collected, and paid were not automobile parts or accessories within the meaning of the Revenue Acts of 1921 and 1924, *supra*. Said claim was rejected or disallowed by the Commissioner of Internal Revenue on April 12, 1927. Subsequently suit for recovery of said taxes was instituted in the Court of Claims. The judgment of said Court dismissing the petition and rendering judgment in favor of the United States was entered on June 10, 1929.

It is the contention of petitioner that the sales of gascolators manufactured by it were not properly taxable as automobile parts or accessories because—

(a) Their cheif use, according to the principle established by this Court in the case of Magone v. Wiederer, 159 U. S. 555, is not on or in connection with automobiles.

(b) They do not come within the provisions of the Revenue Acts of 1921 and 1924. Subdivisions (1) and (2) of Section 900 of the 1921 Act and Section 600 of the 1924 Act imposed excise taxes on the sales of automobiles, both commercial and passenger, and motor cycles. Subdivision (3) of said Sections imposed taxes on the sales of parts or accessories "for any of the articles enumerated in subdivision (1) or (2)". Engines are not therein enumerated, but fall within the provisions of subdivision (3). A gasco-
[fols. 3 & 4] lator at most is but an accessory, and not an essential or necessary accessory, for a gasoline engine. No tax was imposed on sales of parts or accessories for

any of the articles enumerated in subdivision (3), under which sales of automobile engines were taxed.

Reasons Relied on for Allowance of Writ

The writ herein sought should be issued for the following reasons:

1. The Court of Claims has decided an important question of Federal taxation which has not been, but should be, settled by this Court.

2. The decision of the Court of Claims is in conflict with the principle announced by this Court in the case of Magone v. Wiederer, 159 U. S. 555, respecting the application of the rule of chief use to articles in the determination of their taxable status or classification.

3. The effect of the decision of the Court of Claims is to extend by implication the provisions of taxing statutes so as to embrace matters or things not specifically included within their terms and which do not come within the clear import of the language used therein. This in contravention of a long established and settled rule of statutory construction of this Court as announced in Gould v. Gould, 245 U. S. 151, and United States v. Merriam, 263 U. S. 179.

Wherefore your petitioner respectfully prays that a writ of certiorari to review the judgment of the Court of Claims may be granted.

George M. Wilmeth, Attorney for Petitioner, Transportation Building, Washington, D. C.

[fol. 1] In the Court of Claims

No. J-114

The Bassick Manufacturing Company, a Corporation, Claimant,

v.

The United States, Defendant

I. Petition—Filed March 15, 1928

To the Honorable the Court of Claims:

The Claimant, The Bassick Manufacturing Company, respectfully represents to the Court:

I. That it is, and at all times mentioned herein has been, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Chicago, Illinois.

II. That claimant is the manufacturer and distributor, among other things, of a device known as a gascolator, designed for the purpose of straining gasoline used as fuel in internal combustion engines. These devices have been regularly sold to manufacturers of internal combustion engines used in connection with power machines, marine engines, aeroplanes, farm tractors, steam shovels, elevators, etc., as well as to manufacturers of automobiles, and are therefore articles of general commercial use, rather than "parts" or "accessories" for automobiles.

[fol. 2] III. That Section 900 of the Revenue Act of 1921 (42 Stats. 277), provided:

"That from and after January 1, 1922, there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold or leased—

(1) Automobile trucks and automobile wagons (including tires, inner tubes, parts and accessories therefor, sold on or in connection therewith or with the sale thereof), 3 per centum;

(2) Other automobiles and motor cycles (including tires, inner tubes, parts and accessories therefor, sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum;

(3) Tires, inner tubes, parts, or accessories for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum;"

Pursuant to the provisions of said Act, on or about January 6, 1922, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, promulgated certain regulations, designated and known as

"Regulations No. 47 (Revised)," relating to the Excise Taxes on Sales by the Manufacturer under Section 900 of the Revenue Act of 1921, which said regulations provided, in part, as follows:

"Art. 14. * * * The words 'tires, inner tubes, parts or accessories' shall be understood to embrace only such tires, inner tubes, parts, or accessories as have reached such a stage of manufacture that they constitute articles commonly or commercially known as 'tires, inner tubes, parts, or accessories,' and shall not be understood to em-[fol. 3] brace raw materials used in the manufacture of such articles. * * *

Art. 15. Definition of Parts.— A 'part' for an automobile truck, automobile wagon, other automobile, or motor cycle is any article designed or manufactured for the special purpose of being used as or to replace a component part of any such vehicle, and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use, and which is primarily adapted only for use as a *component part of such vehicle.* * * * (Italics supplied.)

Art. 16. Definition of Accessories.—An 'accessory' for an automobile truck, automobile wagon, other automobile, or motor cycle is any article designed to be attached to or used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for use in connection with such vehicle, whether or not essential to its operation. * * *"

IV. That Section 600 of the Revenue Act of 1924 (43 Stats. 253, 322) provided as follows:

"On and after the expiration of thirty days after the enactment of this act there shall be levied, assessed, collected and paid, upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentage of the price for which so sold or leased—

(1) Automobile truck chassis and automobile wagon chassis sold or leased for an amount in excess of $1,000, and automobile truck bodies and automobile wagon bodies sold or leased for an amount in excess of $200 (including in both

cases tires, inner tubes, parts, and accessories therefor sold on or in connection therewith or with the sale thereof), 3 per centum. A sale or lease of an automobile truck or of an automobile wagon shall, for the purposes of this sub- [fol. 4] division, be considered to be a sale of the chassis and of the body;

(2) Other automobile chassis and bodies and motor cycles (including tires, inner tubes, parts, and accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum. A sale or lease of an automobile shall, for the purposes of this subdivision, be considered to be a sale of the chassis and of the body;

(3) Tires, inner tubes, parts, or accessories for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 2½ per centum. This subdivision shall not apply to chassis or bodies for automobile trucks, automobile wagons, or other automobiles;"

And a revised edition of Regulations No. 47 (Revised) promulgated or issued by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, pursuant to the provisions of said Act, on or about August 29, 1924, contains, in Articles 14, 15 and 16, substantially the same definitions and provisions respecting tires, inner tubes, parts, and accessories, as the Regulations promulgated under the Revenue Act of 1921 hereinbefore quoted.

V. Between the dates of October 31, 1922, and March 31, 1926, both dates inclusive, there were levied, assessed against, and collected from Claimant, and paid by Claimant to the United States Collector of Internal Revenue at Chicago, Illinois, taxes in the amount of $15,616.01, on sales by Claimant of gasoline strainers as described in paragraph II hereof. Said taxes were purported to have been levied, assessed, and collected under the provisions or authority of subdivision (3) of Section 900 of the Revenue Act of 1921, [fol. 5] and subdivision (3) of Section 600 of the Revenue Act of 1924.

VI. On or about September 28, 1926, Claimant filed with the Commissioner of Internal Revenue a formal claim for

refund of said sum of $15,616.01, for reasons set forth therein as follows:

"This claim is for sales taxes erroneously paid on the dates as set forth in the schedule annexed hereto, marked schedule 1, in respect of a certain device known as a gascolator. This device is for the purpose of straining gasoline. The taxpayer contends that said gascolators do not constitute parts or accessories within the meaning of Section 900 of the Revenue Act of 1921, or Section 600 of the Revenue Act of 1924. In support of the contention that said articles are and should be exempt from the payment of Excise or Sales taxes, the taxpayer relies upon the following rulings and decisions:

Cum. Bulletin 1923, P. 308—11-22-1076-S. T. 426 re Spark Plugs.

Cum. Bulletin 1923, P. 310—11-17-1025-S. T. 422 re Grease Guns.

Decision of Court of Claims 6/14/1926 in case of Atwater Kent v. U. S., re Timers and Coils.

These devices have been regularly sold to the manufacturers of internal combustion engines used in connection with power machines, marine engines, aeroplanes, farm tractors, steam shovels, elevators, etc. Following is a list of some of the concerns referred to:

Avery Power Machinery Co.,
John Deere Harvester Works,
Guilder Engineering Co.,
Gray Marine Motors Co.,
Ireland Aircraft, Inc.
[fol. 6] J. T. Tractor Co.,
Wisconsin Tractor Co.,
Pioneer Tractors, Inc.,
Marion Steam Shovel Company,
Thomas Elevator Company,
Heath Airplane Company,
U. S. Navy, San Diego, Calif."

VII. The Commissioner of Internal Revenue rejected the aforesaid claim in a letter dated April 12, 1927, reading as follows:

"Treasury Department, Washington

MT:M:JLR.
Cl. 355680.

April 12, 1927.

The Bassick Manufacturing Company, 1828 Diversey Boulevard, Chicago, Illinois.

GENTLEMEN: Reference is made to the claim filed by you for refund of $15,616.01 representing manufacturer's excise tax alleged to have been erroneously paid during the period September, 1922, to February, 1926, inclusive.

The claim is based upon the contention that the tax in question was paid on gascolators which you claim are commercial commodities and do not constitute parts or accessories for automobiles.

You are advised this office holds that the gascolators manufactured by you are automobile parts or accessories, and your sales of these articles during the period covered by your claim were subject to the tax imposed under section 900 (3) of the Revenue Act of 1921 and section 600 (3) of the Revenue Act of 1924.

Your claim is accordingly rejected.

Respectfully, (Signed) D. H. Blair, Commissioner."

EM:mf.

[fol. 7] VIII. Claimant avers that the taxes collected from it on sales of gasoline strainers, as aforesaid, are illegal and erroneous, and were illegally and erroneously assessed and collected by the United States, through said Collector of Internal Revenue at Chicago, Illinois, without warrant or authority of law, for the reason that the said gasoline strainers are not parts or accessories for an automobile or motor cycle, within the meaning of subdivision (3) of Section 900 of the Revenue Act of 1921 and subdivision (3) of Section 600 of the Revenue Act of 1924, but are commercial articles sold for general use.

Wherefore, Claimant claims from the United States the sum of $15,616.01, with interest at the rate of 6 per centum per annum, as provided by law.

IX. No action upon this claim other than herein stated has been had before Congress or any other of the depart-

ments of the Government. Claimant is a citizen of the United States, and it and its officers and directors have at all times borne true allegiance to the Government of the United States, and have not at any time, in any way, aided, abetted or given encouragement to rebellion against said Government; it is the sole owner of the claim herein stated, and no part of such claim has ever been sold, assigned or discharged; and it is justly entitled to the amount herein claimed from the United States after allowing all just credits and off-sets.

The Bassick Manufacturing Company, by T. T. Sullivan, Vice-President. George M. Wilmeth, Transportation Building, Washington, D. C.

[fol. 8] *Duly sworn to by T. T. Sullivan. Jurat omitted in printing.*

[fols. 9 & 10] II. General Traverse—April 24, 1928

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Herman J. Galloway, Assistant Attorney General.

III. Argument and Submission

On May 8, 1929, this case was argued and submitted on merits by Mr. Geo. M. Wilmeth for plaintiffs and Mr. R. C. Williamson for defendants.

[fol. 11] IV. **Special Findings of Fact, Conclusion of Law, and Memorandum by the Court**—Filed June 10, 1929

This case having been heard by the Court of Claims upon the evidence and the report of a commissioner, the court makes the following

Special Findings of Fact

I

The Bassick Manufacturing Company, Inc., during the times hereinafter mentioned was, and now is, a corporation organized, existing, and operating under and by virtue of the laws of the State of Delaware, with its principal place of business located at Chicago, Illinois.

II

Plaintiff and all the officers thereof have at all times borne true allegiance to the United States and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the United States. Plaintiff is a citizen of the United States, the sole owner of the claim hereinafter stated; no action has been had thereon before Congress or any governmental department, and no part of which has ever been sold or assigned.

III

During the times hereinafter mentioned plaintiff was engaged in the business of manufacturing and selling gascolators (gasoline strainers).

A gascolator is a device designed to be placed between the fuel tank and the carburetor of any internal combustion motor for the purpose of taking out dirt, water, grit, or any foreign matter from the gasoline before it gets to the carburetor, preventing the carburetor from becoming inoperative or not functioning properly. Gascolators were sold by plaintiff to and used, during the period October 31, 1922, to March 31, 1926, by airplane, farm implement, automobile, and industrial machinery manufacturers. Said gascolators were adaptable for use on internal combustion engines, which are used to drive tractors, airplanes, industrial machinery, motor boats, marine boats, and automobiles, and were interchangeable on any combustion engine dependent on the size of the fuel pipe, and the adapter which is a device to connect the fuel pipe to the gascolator.

IV

[fol. 12] During the period October 31, 1922, to March 31, 1926, said gascolators were also sold to companies that only

manufactured farm implements and industrial machinery. The difference in the gascolators sold by plaintiff was in the size of the adapter, which connects the gascolator to the fuel pipe. The gascolator could be attached to the fuel pipe without the adapter by swedging the fuel pipe to the gascolator. Plaintiff issued in November, 1926, a catalogue wherein said gascolator and its various parts are described. Said catalogue advertises a "Ford gascolator," a "Franklin gascolator," and a special "Buick gascolator," and quotes prices therefor. It does not appear from the evidence what, if any, part of the taxes sought to be recovered herein were paid for gascolators sold to automobile manufacturers, or for uses other than for automobiles.

V

Plaintiff made and filed its manufacturer's excise-tax returns monthly for the period September, 1922, to February, 1926, inclusive, showing the amount of tax due thereon which was duly assessed on such returns by the Commissioner of Internal Revenue, paid by plaintiff, for the months, in the amounts, and on the dates hereinafter set forth as follows:

Period	Year	Month	Year	Page	Line	Amount	Date paid
September		October		105	4	$5,433.36	Oct. 28, 1922
October	1922	December	1922	2	1	4,132.48	Dec. 1, 1922
November		December		128	0	3,641.64	Dec. 27, 1922
December		January		119	7	2,055.83	Jan. 27, 1923
January		February		112	2	3,231.64	Feb. 26, 1923
February		March		103	7	7,879.78	Mar. 27, 1923
March		April		108	8	7,844.07	Apr. 26, 1923
April		June		0	7	3,417.35	June 1, 1923
May		June		111	2	3,982.35	June 29, 1923
June		August	1923	0	8	1,138.96	Aug. 1, 1923
July	1923	August		108	3	860.59	Aug. 29, 1923
August		September		96	1	1,406.83	Sept. 27, 1923
September		October		117	8	2,232.31	Oct. 30, 1923
October		November		110	8	1,955.98	Nov. 28, 1923
November		December		112	4	1,026.29	Dec. 28, 1923
December		January		122	2	1,047.07	Jan. 29, 1924
January		February		139	0	781.70	Feb. 29, 1924
February		April		11	8	763.93	Mar. 31, 1924
March		April		158	6	1,096.17	Apr. 29, 1924
April		May		120	6	1,582.19	May 27, 1924
May		July	1924	1	5	1,620.80	July 1, 1924
June		July		127	6	1,083.88	July 31, 1924
July	1924	September		22	7	227.26	Sept. 6, 1924

August	1925	September	1925	52	4	656.41	Sept. 26, 1924
September		October		55	3	426.70	Oct. 30, 1924
October		December		11	3	381.27	Dec. 5, 1924
November		December		40	3	197.62	Dec. 24, 1924
December		January	1926	58	9	164.38	Jan. 31, 1925
January	1926	March		1	8	151.09	Mar. 3, 1925
February		March		50	2	417.03	Mar. 31, 1925
March		April		46	6	707.04	Apr. 28, 1925
April		May		43	6	499.69	May 29, 1925
May		June		51	2	928.77	June 30, 1925
June		July		48	1	1,005.80	July 29, 1925
July		September		1	3	807.82	Sept. 1, 1925
August		October		0	7	739.09	Oct. 1, 1925
September		October		49	0	589.75	Oct. 31, 1925
October		December		2	6	531.81	Dec. 1, 1925
November		December		52	6	476.29	Dec. 31, 1925
December		January	1927	39	9	1,031.15	Jan. 29, 1926
January	1927	March		5	6	273.23	Mar. 2, 1926
February		April		0	3	571.05	Apr. 1, 1926

[fols. 13 & 14] VI

On September 29, 1926, plaintiff filed its claim for refund #355680 of manufacturer's excise tax so paid on gascolators (gasoline strainers) for the period September, 1922, to February, 1926, inclusive, in the amount of $15,616.01, which was duly rejected by the Commissioner of Internal Revenue on April 12, 1927.

CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is not entitled to recover, and the petition is therefore dismissed.

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this case, the amount thereof to be ascertained by the clerk and collected by him according to law.

MEMORANDUM

This case is controlled by the decisions of this court in Walker Manufacturing Co. v. United States, 65 C. Cls. 394; Cole Storage Battery Co. v. United States, 65 C. Cls. 164; Advance Automobile Accessories Corp. v. United States, No. H-3, decided October 22, 1928; Borg and Beck Co. v. United States, No. H-437, decided March 11, 1929; Edison Storage Battery Co. v. United States, No. F-359, decided May 6, 1929; Fairmont Tool and Forging Company v. United States, No. J-106, decided June 3, 1929.

Plaintiff's petition should be dismissed It is so ordered.

[fol. 15] V. JUDGMENT

At a Court of Claims held in the City of Washington on the 10th day of June, A. D. 1929, judgment was ordered to be entered as follows:

Upon the Special Findings of Facts, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and the petition is therefore dismissed.

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this case, the amount thereof to be ascertained by the clerk and collected by him according to law, which amount is found to be $49.21.

[fol. 16] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 34,481. Court of Claims. Term No. 350. The Bassick Manufacturing Company, petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed August 29, 1929. File No. 34,481.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 4, 1929

The petition herein for a writ of certiorari to the Court of Claims is granted, and the case is assigned for argument with cases Nos. 127 and 275 as one case.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.